IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 3205 of 2007(F)

OS.45/1998 OF SUB COURT, MUVATTUPUZHA
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PETITIONER:

GEEMON CHETTIYATTU, S/O.CHACKO,
AGED 31 YEARS, CHETTIYATTU HOUSE,
MATTAKUZHY KARA, THIRUVANIYOOR VILLAGE,
MUVATTUPPUZHA TALUK.

BY ADV. SRI.P.JACOB VARGHESE,
ADV. SRI.V.MANOJ KUMAR,
ADV. SRI.VIVEK VARGHESE P.J.

RESPONDENTS:
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1. **MR.GEORGE PILLIA, S/O.DEVASIA,**
   AGED 59 YEARS, VARADAKUZHIYIL HOUSE,
   ATHIRAMPUZHA VILLAGE, NOW RESIDING AT
   HOGVINON PALACE 11 H NEW ROCHELLE,
   NEW YORK, U.S.A., REPRESENTED BY
   POWER OF ATTORNEY HOLDER.

2. **MR.SEBASTIAN V.S., S/O.DEVASIA,**
   AGED 47 YEARS, VARADAKUZHIYIL HOUSE,
   ATHIRAMPUZHA VILLAGE, KOTTAYAM DISTRICT.

3. **MR. ISSAC. V.S., S/O. DEVASSIA,**
   AGED 53 YEARS, DO. DO.

BY ADV. SRI.C.C.THOMAS FOR R1, R2 & R3.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.3205/2007-F:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PLAINT IN O.S. NO. 45/98 OF SUB COURT MUVATTUPUZHA.

EXT.P.2: COPY OF THE WRITTEN STATEMENT BY THE DEFENDANT IN O.S. NO. 45/98 OF SUB COURT, MUVATTUPUZHA.

EXT.P.3: COPY OF THE DISPUTED DOCUMENT DTD. 10/03/1997.

EXT.P.4: CERTIFIED COPY OF ORDER DTD. 24/01/07 IN O.S. 45/98 OF SUB COURT, MUVATTUPUZHA.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N.KRISHNAN, J

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W.P.(C) No.3205 OF 2007

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Dated this the 29th day of October 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Court, Muvattupuzha in O.S.No.45 of 1998. The learned Sub Judge considered the nature and character of the document and found that it was an agreement. He also found that it is insufficiently stamped and therefore held that stamp duty and penalty is to be paid. Aggrieved by the said decision, the defendant has come up before this court.

2. The suit is one for realisation of an amount of Rs.6.50 lakhs. It is the case of the plaintiffs that these amounts were due under various transactions which ultimately crystallized into the form of a document which is in dispute before me. It is contended that it is by that document a promise is given to pay back the amount and therefore it comes under the definition of a bond under Section 2(2) of the Kerala Stamp Act. On the other hand, learned counsel for the respondents would contend that the document is nothing but an acknowledgment of the anterior transactions and what is undertaken is to pay the amount due under the anterior transactions

by virtue of an agreement.

2. I had perused the disputed document. The disputed document is styled as a promissory note. It does not satisfy any of the ingredients of a promissory note. Therefore, the nomenclature is incorrect and it need not be taken into account. While finding out what is a document, it is the duty of the court to read the document in toto and understand the intention of the parties behind the execution of the document. A perusal of the said document would reveal that the defendant in the suit had received a sum of Rs.4,80,000/- on so many occasions and had also borrowed Rs.70,000/- for the purpose of purchasing a vehicle and further after appropriating an amount of Rs.1 lakh from his brother, etc. a total amount of Rs.6.50 lakhs is due and that he undertakes to pay the said amount in instalments within a period of 2 years. It is also undertaken that in case of default, the properties described in the document can be proceeded against and in case of non-satisfaction personally against him as well. Now what is to be found out is the question whether the recital in the document refers to it as an agreement or it is a bond. In the decision reported in ***Radha v. Sankaranarayanan (2007(1)KLT 20)***, this court has held that a document whereunder the executant undertakes to repay the amount borrowed earlier within the period provided is an agreement and not a bond. This court further held that the

distinguishing feature of a bond is that the obligation must have been created in the instrument itself and if the obligation was a pre-existing one, it does not partake of the character of a bond.

3. A reading of the document meticulously and minutely would reveal that what is referred to in the document is about the amount due from the defendant on anterior transactions. Thereafter all the transactions are added up together and a figure is arrived at stating that it comes to Rs.6.50 lakhs. So, even on the date of the execution of the agreement, there was a liability cast upon the defendant as per the agreement or in other words, it was only an agreement to pay the amount due under the anterior transactions within a stipulated period of 2 years. Therefore, I have no hesitation to hold that the document in question refers to anterior transactions and then fixes the liability and therefore it partakes the character of an agreement and not a bond. Applying the dictum laid down in the decision referred to above, I have no hesitation to hold that the court below was perfectly justified in holding that it was an agreement. It was not properly written up in a stamp paper. Therefore, the court below has directed the plaintiff to pay stamp duty and penalty on that document.

Therefore, the writ petition is devoid of merit and it is dismissed. I make it clear that the court has only entered into a finding regarding the

correct description of the document as an agreement and if there are other points which the petitioner/defendant can raise validly under law, this judgment will not debar him from doing so.

M.N.KRISHNAN, JUDGE

Cdp/-